

NOT ONE MORE: ADDRESSING THE DATA CRISIS OF MISSING AND
MURDERED INDIGENOUS WOMEN AND GIRLS IN URBAN AREAS

by
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Abstract

A data crisis of missing and murdered indigenous women and girls (“MMIWG”) in urban areas exists in the shadows of American society. A 2018 report released by the Urban Indian Health Institute revealed the extent of the crisis; there is currently no federal or state comprehensive database aimed at collecting data on MMIWG in urban areas, a rapidly growing epidemic. The crisis is on the radar of federal and state politicians alike, but as of December 2018, laws aimed at addressing the data crisis have failed to be made into law. Furthermore, such laws are missing a key component in the crisis – the ability to include MMIWG in urban areas due to jurisdictional boundaries. This capstone proposes and recommends that Congress amend The General Crimes Act and The Major Crimes Act to expand federal jurisdiction of violent crime and crime committed against American Indian and Alaska Native (“AI/AN”) peoples by non-AI/AN people to include all tribal citizens, regardless of their reservation residency status.

Advisor: Paul Weinstein Jr.

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Additionally, I would like to acknowledge the Reclaiming Native Truth Project for their “Guide for Allies.” The language used throughout this capstone to refer to American Indian and Alaska Native peoples was at the recommendation of the project and is intentionally plural.

Lastly, I would like to acknowledge all the missing and murdered indigenous women and girls in urban areas. This capstone is dedicated to you – you are not invisible.

The content presented in this capstone touches on sexual violence against women. Please take caution before and after reading.

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TO Senator Lisa Murkowski (AK), Senate Committee on Indian Affairs

FROM Justina Rothenberg

SUBJECT Data Crisis of Missing and Murdered Indigenous Women and Girls in
Urban Areas

DATE May 7, 2019

Action Forcing Event

The Urban Indian Health Institute (“UIHI”) released a report in November 2018 highlighting the ongoing crisis of missing and murdered indigenous women and girls (“MMIWG”) in urban areas. The study underlines the lack of data collection and understated number of MMIWG in urban areas, allowing the crisis to continue in the shadows; hidden “in life, in the media, and in the data¹.”

Statement of the Problem

The National Crime Information Center (“NCIC”) reported in 2016 that there were 5,712 cases of MMIWG; of these cases, only 117 were recorded in the United States Department of Justice’s (“DOJ”) National Missing and Unidentified Persons System (“NamUs”) database². Additionally, tribal leaders and family members of MMIWG assert that this is an underestimate of the accurate number of cases. To say there is a crisis of data collection and mismanagement of MMIWG cases is an understatement. Even with resolutions

¹ Annita Lucchesi & Abigail Echo-Hawk, “Missing and Murdered Indigenous Women and Girls Report: A snapshot of data from 71 urban cities in the United States,” *Urban Indian Health Institute*, accessed February 10, 2019, <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

² Andrea Diaz, “At least 24 Native Americans – most of them women – went missing in Montana last year. Two senators are trying to do something about it,” *CNN*, January 8, 2019, <https://www.cnn.com/2019/01/07/us/native-american-women-missing-montana-trnd/index.html>

introduced and passed to address this crisis, there are none specifically aimed at addressing MMIWG in urban areas, of which 71% of American Indian and Alaska Native (“AI/AN”) peoples live in the United States³. As of December 2018, there is no standard or comprehensive federal or state data collection system for tracking and reporting MMIWG in urban areas, allowing the crisis to go unseen and continue.

AI/AN women and girls⁴ experience among the highest rates violence in the United States; more than half (55%⁵) of all AI/AN women will be victims of domestic violence or sexual assault, and 4 out of 5 will encounter violence in their lifetime⁶. For reference, 46.9% of non-Hispanic white women, 38.2% of non-Hispanic black women, 35.6% of Hispanic women, and 31.9% of Asian or Pacific Islander women have experienced sexual violence other than rape in their lifetime⁷. Additionally, a federal study reported that AI/AN women are ten times more likely to be murdered than non-AI/AN women⁸. The Center for Disease Control and Prevention (“CDC”) reported that murder is the third leading cause of death for AI/AN women between the ages of 10 and 24⁹. There has been no research, however, aimed specifically at how and if these numbers differ in urban areas because no comprehensive data source of urban AI/AN women exists.

³ Annita Lucchesi and Abigail Echo-Hawk, “Our Bodies Our Stories: Sexual Violence Among Native Women in Seattle, WA,” *Urban Indian Health Institute*, accessed February 17, 2019, http://www.uihi.org/wp-content/uploads/2018/08/UIHI_sexual-violence_r601_pagesFINAL.pdf

⁴ AI/AN women and girls are further referred to as AI/AN women unless otherwise stated.

⁵ “Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011,” *Center for Disease Control and Prevention MMWR, Surveillance Summaries* 63, no. 11 (September 5, 2014), <https://www.cdc.gov/mmwr/pdf/ss/ss6308.pdf>

⁶ “HR 2951 – 65th Legislature, 2018 Regular Session: Missing Native American Women—Study,” *Washington State Legislature*, accessed February 17, 2019, <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2951-S.SL.pdf#page=1>

⁷ Center for Disease Control and Prevention, “MMWR Report.”

⁸ Washington State, “HR 2951.”

⁹ Jim Schaffer, “Washington State Legislature Takes Account of Missing and Murdered Native Women,” *Nonprofit Quarterly*, February 7, 2018, <https://nonprofitquarterly.org/2018/02/07/washington-state-legislature-takes-account-missing-murdered-native-women/>

Of the 71% of AI/AN peoples living in urban areas, 52% identify as women¹⁰. A report by UIHI, distributed in November 2018, identified 506 records of MMIWG in urban areas from 1900 to present, two-thirds of which were reported within the past eight years¹¹. These cases were identified in 71 United States cities with high populations of urban AI/AN women. UIHI estimates that the 506 cases found in the report is an underrepresentation of the number of MMIWG in urban areas, asserting that there are significant gaps in data reflecting a lack of cooperation between victims' families, local law enforcement, tribal leaders and police, and federal law enforcement agencies¹². This lack of cooperation comes from years of "institutional racism influenced by government systems¹³," allowing for continued mistrust and blurred lines of reporting processes. UIHI found an additional 153 unreported cases, that never appeared in any police records, by searching through news reports, government missing persons databases, and social media.

Of the data collected by UIHI from local police departments, 43 departments provided any level of data; 33 searched through their records and 10 only confirmed data of cases provided to them by UIHI. 14 agencies provided no data at all and 18 agencies still have pending requests for data. The lack of data provided by local law enforcement agencies speaks volumes to the data crisis, questioning whether the data exists in any law enforcement records and how and who it is shared with. Moreover, data that was shared presents challenges of its own. Data collected showed that 25% of cases were missing

¹⁰ Lucchesi & Echo-Hawk, "MMIWG Report."

¹¹ Lucchesi & Echo-Hawk, "MMIWG Report."

¹² Lucchesi & Echo-Hawk, "MMIWG Report."

¹³ Evan Bush, "New report highlights flaws in police data on missing, murdered indigenous women and girls," *Seattle Times*, November 14, 2018, <https://www.seattletimes.com/seattle-news/new-report-highlights-flaws-in-police-data-on-missing-murdered-indigenous-women-and-girls/>

persons cases, 56% were murder cases, and 19% had a status of “unknown,” indicating that law enforcement officials gave incomplete data (See Figure 1)¹⁴.

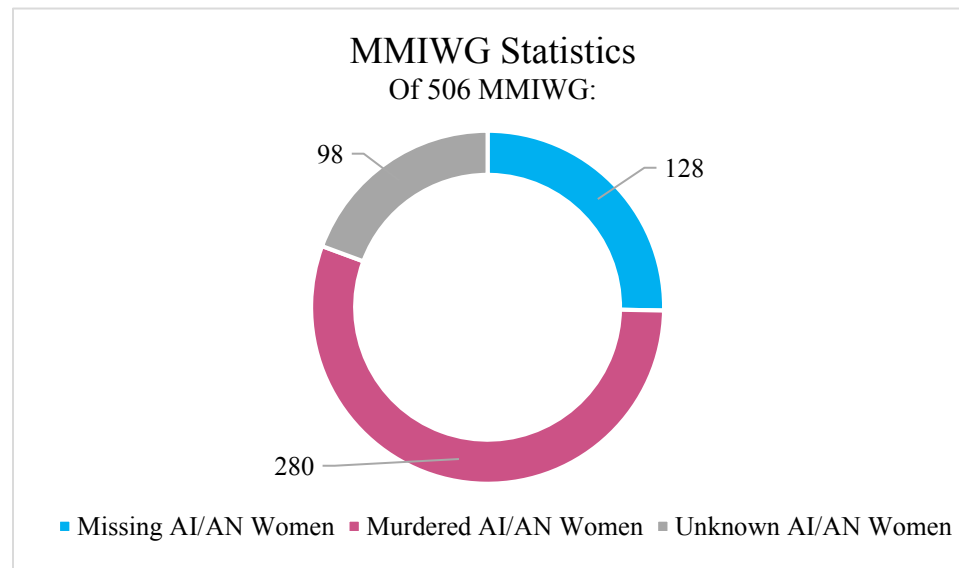


Figure 1 MMIWG Statistics – MMIWG Report

Additionally, racial misclassifications further limited already scarce data. Several racial inconstancies were found in the data collected, including:¹⁵

- 9 of the 71 cities in UIHI’s report were unable to identify AI/AN peoples in their databases
- AI/AN women from tribes that are not federally recognized were not identified as AI/AN
- Victims whose races were unknown were classified as white, the default race for an unidentified missing or murdered person
- Victims with Spanish sounding last names were identified as Hispanic; many AI/AN peoples throughout the United States took on Spanish names during Spanish colonialization

¹⁴ Lucchesi & Echo-Hawk, “MMIWG Report.”

¹⁵ Lucchesi & Echo-Hawk, “MMIWG Report.”

A Seattle Police Department spokesperson confirmed that its agency, along with multiple others, could not differentiate data between AI/AN peoples and Indian Americans – Indian American referring to people of Southeast Asian descent¹⁶. The spokesperson went on to confirm that “the department acknowledged possible issues of racial misclassification in older records [finding that its] homicide unit found the letter ‘N’ had been used to describe victim race as both Native American and ‘Negro [*sic*]’ in records into the early ‘80s¹⁷.”

While the United States Congress “Congress”, along with state congresses throughout Indian Country – the term created by Congress in 1948 under 18 U.S.C. § 1151 referring to “all land within the limits of any Indian reservation under the jurisdiction of [the United States] government” – have introduced resolutions to address the data crisis of MMIWG, the resolutions exclude urban areas. Savanna’s Act, a bill introduced by former Senator Heidi Heitkamp in the 115th Congress, intended to improve the data collection crisis by requiring federal law enforcement agencies to report cases of MMIWG, establishing guidelines for local, state, and federal reporting and investigating of MMIWG cases, and expanding tribal access to federal databases¹⁸. The bill fails, however, to include AI/AN women living in urban areas because of DOJ’s lack of authority over local and municipal law enforcement; violence against AI/AN women only falls under federal jurisdiction on federally recognized tribal lands and not in urban areas¹⁹. The lack of

¹⁶ Bush, “Flaws in Police Data.”

¹⁷ Bush, “Flaws in Police Data.”

¹⁸ “S. 1942 — 115th Congress: An Act to direct the Attorney General to review, revise and develop law enforcement and justice protocols appropriate to address missing and murdered Indians, and for other purposes,” *United States Congress, Senate*, accessed February 17, 2019, <https://www.congress.gov/115/bills/s1942/BILLS-115s1942es.pdf>

¹⁹ Jim Schaffer, “A March Breaks the Silence on Missing & Murdered Indigenous Women,” *Nonprofit Quarterly*, January 8, 2018, <https://nonprofitquarterly.org/2018/01/08/march-bitter-silence-missing-murdered-indigenous-women/>

inclusion of urban AI/AN women means the bill's namesake, Savanna LaFontaine-Greybird, a Spirit Lake citizen who was found murdered in Fargo, North Dakota, would not have been included in the intended efforts of the bill.

Between the lack of data, lack of access to data, and lack of cooperation and mistrust among law enforcement agencies and tribal authorities, the data crisis of MMIWG will allow violence against this already vulnerable group to continue.

Background

The crisis of MMIWG exists in the shadows of the American public. Public perception of the crisis is influenced by the stereotype that urban AI/AN women choose to live high-risk lifestyles²⁰, allowing law enforcement to disregard the crisis. Of the 506 cases of MMIWG found in UIHI's report on the MMIWG data crisis, 95% of the cases were not covered by national media²¹. Of the ones that were, 31% included violent language, further perpetuating the negative stereotype of AI/AN women²². Violent language used to describe MMIWG included references to drugs and alcohol, sex work, victim's criminal history, victim blaming, and justifying the perpetrators actions. This type of reporting is known to minimize crises and limit efforts to increase awareness²³. Because of this, AI/AN groups around the United States have taken it upon themselves to bring national attention to the crisis of MMIWG.

²⁰ Graham Lee Brewer "Study of missing and murdered Indigenous women highlights police data failures," *High Country News*, November 14, 2018, <https://www.hcn.org/issues/50.21/tribal-affairs-study-of-missing-and-murdered-indigenous-women-highlights-police-data-failures>

²¹ Lucchesi & Echo-Hawk, "MMIWG Report."

²² Lucchesi & Echo-Hawk, "MMIWG Report."

²³ Lucchesi & Echo-Hawk, "MMIWG Report."

AI/AN Databases

Groups like Sovereign Bodies Institute, Justice for Native Women, and the Alaska Native Women's Resource Center, along with UIHI, have taken to both the streets and local, state, and federal lawmakers' offices to not only bring attention to the crisis, but to collect data on MMIWG that the government has failed to. Databases like these are currently the only kinds that have comprehensive data regarding MMIWG.

Sovereign Bodies Institute – MMIWG Database

Annita Lucchesi and the Sovereign Bodies Institute (“SBI”) created a national database of MMIWG from 1900 to today. The MMIWG Database aims to be a central, routinely updated, comprehensive resource to “support community members, advocates, activists, and researchers in their work towards justice for [AI/AN] stolen sisters²⁴.” Data collected includes cases of MMIWG from the United States and Canada, logging the following information broken into five categories²⁵:

- *Victims* – name, AI/AN name and translation, tribal affiliation, birth date, age, motherhood status, affiliated MMIWG cases in family
- *Perpetrators* – race, gender, relationship to victim
- *Violence* – missing or murdered, date of incident, violence perpetrated against victim, relevant issues (“domestic violence, sexual assault, sex work/sex trafficking, foster care, police brutality, trans victim, death in custody, unsheltered, residential/boarding school”)

²⁴ Annita Lucchesi, “MMIWG Database,” *Sovereign Bodies Institute*, accessed April 23, 2019, <https://www.sovereign-bodies.org/mmiw-database>

²⁵ Lucchesi, “MMIWG Database.”

- *Police/Court Response* – reward amount, case classification, conviction, law enforcement agencies involved
- *Geography* – city, state/province, country, location type (“tribal land, rural, urban”)

Since the creation of the database in 2015, an average of 250-300 new MMIWG cases are added each year. Using this as the basis, SBI estimates that the database is missing more than 20,000 cases, and acknowledges their limitations to collect information on undocumented, underreported, and geographically inaccessible cases²⁶. Access to the database is only available if requested and is only granted to individuals “committed to upholding the sacredness of the data... at this time, the database does not grant access to raw data to non-Indigenous scholars, colonial governmental agencies, or the press²⁷.”

Justice for Native Women – Master List

Justice for Native Women uses a crowd-sourcing method to put names to faces of MMIWG. The database has a photo of a missing or murdered AI/AN woman along with any information available about the case, creating a civilian run database and master list of MMIWG cases. Justice for Native Women’s database currently has 1,760 MMIWG on its master list, broken into four categories; Missing, Murdered, Unknown, and Mysterious Death. Of the 1,760 MMIWG listed in Justice for Native Women’s database, 881 cases are not solved and 244 have a status of unknown²⁸.

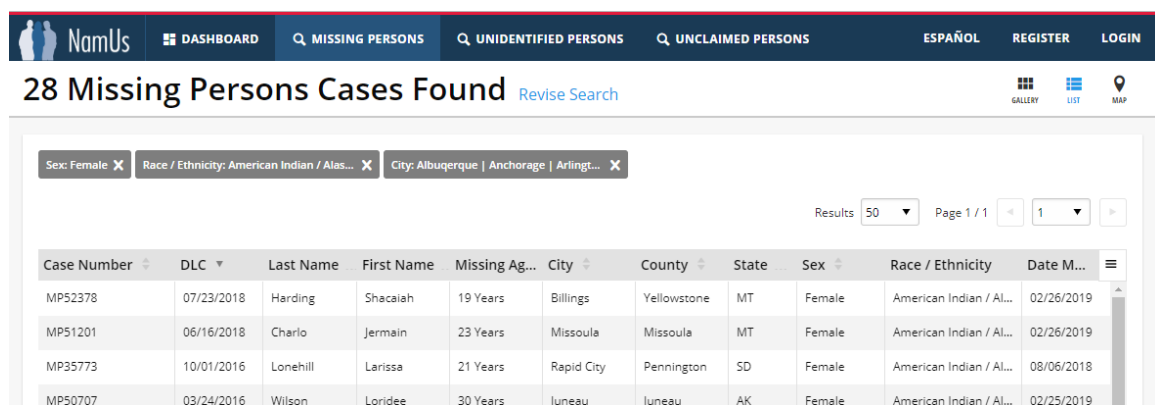
²⁶ Lucchesi, “MMIWG Database.”

²⁷ Lucchesi, “MMIWG Database.”

²⁸ Mak Miller-Tanner, “JFNW Master List,” *Justice for Native Women*, accessed April 23, 2019, <http://www.justicefornativewomen.com/?view=timeslide>

Federal Databases

Between NamUS, NCIC, and CDC, the difference in available and contradicting data about MMIWG is staggering, especially when compared to UIHI's report. As of 2017, NCIC listed 5,712 reported cases of MMIWG²⁹. NamUs only had data for 117³⁰. Of the 117 reported in NamUs, a search of AI/AN women in the 71 cities identified in UIHI's report returned a result of 28 missing AI/AN women. In contrast UIHI's report identified 128 (see Figure 2).



Case Number	DLC	Last Name	First Name	Missing Ag...	City	County	State	Sex	Race / Ethnicity	Date M...
MP52378	07/23/2018	Harding	Shacalah	19 Years	Billings	Yellowstone	MT	Female	American Indian / Al...	02/26/2019
MP51201	06/16/2018	Charlo	Jermain	23 Years	Missoula	Missoula	MT	Female	American Indian / Al...	02/26/2019
MP35773	10/01/2016	Lonehill	Larissa	21 Years	Rapid City	Pennington	SD	Female	American Indian / Al...	08/06/2018
MP50707	03/24/2016	Wilson	Loridee	30 Years	Juneau	Juneau	AK	Female	American Indian / Al...	02/25/2019

Figure 2 NamUs Database of Missing AI/AN Women in 71 Cities

CDC's database suggests that murder is the 3rd leading cause of death among AI/AN women between the ages of 10-24 and the 5th leading cause of death among AI/AN women between the ages of 25-34³¹, but as indicated in UIHI's report, the common racial misclassification of AI/AN women skews what data does exist, insinuating that murder is a significantly higher cause of death than CDC reports.

²⁹ "2017 NCIC Missing Person and Unidentified Person Statistics," *Federal Bureau of Investigation, National Crime Information Center*, accessed March 5, 2019, <https://www.fbi.gov/file-repository/2017-ncic-missing-person-and-unidentified-person-statistics.pdf/view>

³⁰ "National Missing and Unidentified Persons System," *Department of Justice, National Institute of Justice*, accessed March 5, 2019, <https://www.namus.gov/>

³¹ "Leading Causes of Death (LCOD) by Age Group, American Indian/Alaska Native Females-United States, 2015," *Center for Disease Control and Prevention, Health Equity*, accessed March 5, 2019, <https://www.cdc.gov/women/lcod/2015/native/index.htm>

Current State Policies Addressing MMIWG

While there are currently no comprehensive federal laws addressing MMIWG, the crisis is on the radar of some state lawmakers. Washington State, North Dakota, Montana, and Minnesota are among states that have acknowledged the crisis and aimed to find a solution. As of December 2018, however, Washington State was the only state to pass a bill directly aimed at MMIWG. The remaining states plan to introduce their bills in January 2019.

Washington State Substitute House Bill 2951 – Missing Native American Women Study

Washington State's Congress passed a bill on June 7, 2018, in response to the data crisis of MMIWG. The legislature acknowledged that there is currently no comprehensive data collection system for tracking and reporting MMIWG, and that the gaps in reporting and investigating MMIWG leaves AI/AN women vulnerable to violence. In response to the neglect MMIWG face in society, along with the growing awareness surrounding the crisis and the need for criminal justice reform, the state commissioned a study to protect AI/AN women. The study is defined as follows³²:

- Washington State Patrol will conduct a study to determine how an increase in state criminal justice protective and investigative resources for reporting and identifying MMIWG will better protect AI/AN women
- Washington State Patrol will work with Indian Affairs to convene meetings with tribal and local law enforcement partners, federally recognized tribes, and urban Indian organizations (“UIOs”) to determine the scope of the problem,

³² Washington State, “HB 2951.”

identify barriers, and find ways to create partnerships to increase reporting and investigation

- Washington State Patrol will work with DOJ to increase information sharing and coordinating resources

North Dakota House Bill No. 1311

North Dakota Legislative Representative Ruth Buffalo introduced a bill to the 66th Legislative Assembly regarding law enforcement training on MMIWG. The bill would amend the North Dakota Century Code to establish a commission that would collect and evaluate data and report it to the attorney general, governor, and legislative assembly. The bill would also promote training on MMIWG for North Dakota state's attorney association, North Dakota peace officers standards and training board, and state and local law enforcement officials³³. The bill is expected to be voted on in January 2019.

Montana Legislature's State-Tribal Relations Committee House Bill No. 21

In 2018, Montana Representative Rae Peppers introduced Hanna's Act. The bill would authorize the state's Justice Department to assist in the investigation of all missing persons cases and require the employment of a specialist to act as liaison between the state and the families of MMIWG. A related bill would require law enforcement agencies to accept, without delay, any missing persons case. Both bills are in response to the murder of Hanna Harris, a Lame Deer citizen murdered in 2013; the investigation into her disappearance and

³³ "H.B 1311 – 66th Legislative Assembly of North Dakota: An Act to amend and reenact subsection 2 of section 54-12-33 of the North Dakota Century Code, relating to law enforcement training on missing and murdered indigenous people," *North Dakota Legislative Branch*, accessed April 22, 2019, <https://www.legis.nd.gov/assembly/66-2019/bill-actions/ba1311.html>

subsequent death was delayed because of bureaucratic red tape³⁴. Both bills passed committee in September 2018 and are expected to be voted on in early 2019.

Minnesota House of Representatives

On March 1, 2018, Minnesota Representative Mary Kunes-Podein called on Minnesota's governor to create a task force exclusively to address the crisis of MMIWG in Minnesota. The task force would cost less than \$1M a year and work with state, tribal, federal, and non-governmental organizations ("NGOs") to "develop appropriate methods for tracking and collecting data³⁵," including a better coordinated effort to end violence against AI/AN women. The task force would "provide analysis regarding the systemic causes behind the number of missing Native American women in the state to law enforcement, policymakers and the public," reporting annually to the legislature and providing recommendations to reduce and end the crisis of MMIWG in Minnesota. Rep. Kunes-Podein's effort failed to materialize into a bill at the end of 2018 but is expected to be reintroduced in January 2019.

Current Federal Policies Addressing MMIWG

Factions of the federal government have also been on the forefront of the crisis of MMIWG. Both members of the House and Senate have introduced bills aimed at protecting AI/AN women and addressing the data crisis. However, as of December 2018, only one of three prominent bills introduced into Congress to address MMIWG has been enacted into law.

³⁴ "H.B 21 – 66th Legislature of Montana: Establishing 'Hanna's Act'," *Montanan Legislature*, accessed April 23, 2019, [http://laws.leg.mt.gov/legprd/LAW0210W\\$BSIV.ActionQuery?P_BILL_NO1=21&P_BLTP_BILL_TYP_CD=HB&Z_ACTION=Find&P_SESS=20191](http://laws.leg.mt.gov/legprd/LAW0210W$BSIV.ActionQuery?P_BILL_NO1=21&P_BLTP_BILL_TYP_CD=HB&Z_ACTION=Find&P_SESS=20191)

³⁵ Mary Kunes-Podein, "Task Force Called for to Stop the Epidemic of Violence Against Indigenous Women," *Minnesota House of Representatives*, March 1, 2018, <https://www.house.leg.state.mn.us/members/profile/news/15466/19668>

H.R. 725 – Indian Arts and Crafts Amendments Act of 2010

Included in the Indian Arts and Crafts Amendments Act of 2010 is Title II: The Tribal Law and Order Act (“TLOA”). TLOA was written in response to the significant increase of domestic and sexual violence against AI/AN women in Indian Country. TLOA aims to, among other things³⁶:

- Clarify the role of federal, state, tribal, and local law enforcement agencies related to crimes in Indian Country
- Increase coordination among federal, state, tribal, and local law enforcement agencies
- Reduce violent crime in Indian Country and combat sexual and domestic violence against AI/AN women
- Increase and standardize the collection and sharing of criminal data among federal, state, tribal, and local law enforcement agencies

Within the provisions of TLOA is funding to train federal, state, local, and tribal law enforcement agencies on reporting and investigating cases of MMIWG in Indian Country.

H.R. 6545 – Violence Against Women Reauthorization Act of 2018

Representative Sheila Jackson Lee (D-TX 18th District) introduced an amendment to the Reauthorization of the Violence Against Women Act of 2018 (“VAWA”) called Title IX – Safety for Indian Women. This amendment would have extended tribal jurisdiction to

³⁶ “H.R.725 – 111th Congress: Indian Arts and Crafts Amendments Act of 2010,” *US Congress, House*, accessed March 5, 2019, <https://www.congress.gov/bill/111th-congress/house-bill/725>

non-AI/AN people who commit violent acts against AI/AN women as well as produce annual reports on known statistics of MMIWG³⁷. While nearly 97% of violence against AI/AN women are perpetrated by non-AI/AN people³⁸, currently, tribal jurisdiction of non-AI/AN people applies only to domestic violence offenders and does not include, among other things, murder³⁹. Title IX – Safety for Indian Women did not pass the House and VAWA expired on September 30, 2018.

S. 1942 –Savanna’s Act

Savanna’s Act was introduced in the Senate on October 5, 2017 by then Senator Heidi Heitkamp (D-ND), member of the Senate Committee on Indian Affairs. The bill, cosponsored by 17 senators of the 115th Congress, aimed to require DOJ to update the online federal database of missing people to include a data field for victims’ tribal enrollment information, allowing MMIWG to be recorded in the database⁴⁰. At the time of its proposal, DOJ’s database did not include a field to identify missing women as AI/AN. Savanna’s Act also aimed to require DOJ to⁴¹:

- Create guidelines to standardize law enforcement and justice protocols for reporting and investigating cases of MMIWG
- Consult with tribal citizens and tribal law enforcement on cases of MMIWG

³⁷ “H.R. 6545 – 115th Congress: Violence Against Women Reauthorization Act of 2018,” *US Congress, House*, accessed March 5, 2019, <https://www.congress.gov/bill/115th-congress/house-bill/6545/cosponsors>

³⁸ Rebecca Nagle, “Native American Women and VAWA – What’s at stake?,” *Women’s Media Center, Politics, Violence Against Women*, October 17, 2018, <http://www.womensmediacenter.com/news-features/native-american-women-and-vawa-whats-at-stake>

³⁹ Nagel, “What’s at stake?”

⁴⁰ US Congress, “S. 1942.”

⁴¹ US Congress, “S. 1942.”

- Provide tribal, local, state, and federal law enforcement agencies with training and assistance to implement standardized protocols

Additionally, the bill aimed to require all federal law enforcement agencies that investigate and prosecute MMIWG cases to modify their laws to comply with DOJ standards⁴². Savanna's Act passed the Senate by Voice Vote on December 6, 2018 and was sent to the House on December 10, 2018. Then Representative Bob Goodlatte (R-VA 6th District) drafted an alternate bill, stripping Savanna's Act of DOJ's requirement to enforce any standardized protocols for law enforcement agencies regarding cases of MMIWG⁴³. Goodlatte then held Savanna's Act at the desk and let it expire at the end of the 115th Congress, on December 14, 2018. Savanna's Act is expected to be reintroduced into the Senate at the start of the 116th Congress.

Key Stakeholders

AI/AN peoples and Congress represent the two biggest key stakeholders in the data crisis of MMIWG in urban areas, followed closely by DOJ and UIOs.

- *American Indian and Alaska Native Peoples* – AI/AN peoples are most notably the biggest key stakeholder in the data crisis of MMIWG for several reasons. First, and most obvious, AI/AN women are the focus of cases of MMIWG. AI/AN women, their families, and tribal authorities have the most to lose should the crisis perpetuate. They also have the most to gain with comprehensive laws aimed at addressing the crisis.

⁴² US Congress, "S. 1942."

⁴³ Jennifer Bendery, "A Single GOP Congressman Is Blocking A Bill To Help Abused Native Women," *The Huffington Post*, December 17, 2018, https://www.huffingtonpost.com/entry/native-women-abused-bill-bob-goodlatte_us_5c17eafce4b0b1ea387f584b

- *Congress* – Congress holds the power to make laws regarding Indian Country. While state and local officials have jurisdiction over urban areas, only with Congressional buy-in can a federal, comprehensive database and nationwide standard protocols be mandated to protect AI/AN women.
- *Department of Justice* – The Federal Bureau of Investigation (“FBI”), a DOJ department, currently has federal jurisdiction over major crimes, including murder, and crimes committed by non-AI/AN people against AI/AN peoples in Indian Country. Additionally, DOJ maintains federal criminal and missing persons databases. DOJ mandates and cooperation are necessary to effect change in the data crisis of MMIWG.
- *Urban Indian Organizations* – As noted previously, the only comprehensive databases of MMIWG are created and maintained by UIOs. UIOs act as the liaison between urban AI/AN peoples and the federal government.

Policy Proposal

The purpose of this policy proposal is to address the data crisis of MMIWG in urban areas by creating an effective strategy to compile data for a comprehensive database of crimes against urban AI/AN women. Such a policy could result in a general reduction of the amount of MMIWG in urban areas and, at the very least, allow for an all-inclusive data collection system to accurately report the number of MMIWG in urban areas. The data collection system could be used for the purpose of studying the crisis, creating further policy to protect AI/AN women, and allowing MMIWG to not be forgotten. This goal can

be accomplished by expanding the jurisdiction of federal law enforcement to all citizens of federally recognized AI/AN tribes, living on or off reservation.

Currently, FBI's Indian Country Crimes Unit ("ICCU"), along with the Bureau of Indian Affairs, Office of Justice Services ("BIA-OJS"), are the responsible law enforcement agency for violent crime in Indian Country. Over 200 federally recognized reservations are regulated by ICCU. Of the nearly 200 agents and specialists dedicated to Indian Country, their highest priority is violent crimes such as murder and sexual abuse, which compromise over 75% of all investigations in Indian Country⁴⁴. Expanding FBI's jurisdiction to include AI/AN peoples living off reservation, particularly in urban areas, would allow them to handle all cases of MMIWG. In turn, this would mean that one central law enforcement agency would be tasked with collecting and maintaining data for all MMIWG – rather than several different local law enforcement agencies as it stands today – allowing for a comprehensive database to be formed.

Policy Authorization Tool

The policy authorization tool for the proposed policy is legislation. As it currently reads, Savanna's Act requires DOJ to create and standardize protocols for investigating and bringing justice for MMIWG. This law, however, fails to address MMIWG in urban areas since federal agencies have no jurisdiction in such areas. For Savanna's Act to be effective in ending the crisis of MMIWG in urban areas, FBI needs to expand its jurisdiction from violent crimes in Indian Country to violent crimes for all federally recognized tribal

⁴⁴ Robert Johnson, "Missing and Murdered: Confronting the Silent Crisis in Indian Country," *Federal Bureau of Investigation, Statement Before the Senate Committee on Indian Affairs*, December 12, 2018, <https://www.fbi.gov/news/testimony/missing-and-murdered-confronting-the-silent-crisis-in-indian-country>

citizens. The General Crimes Act (“18 USC 1152”) and Major Crimes Act (“18 USC 1153”) give the federal government jurisdiction over murder and sexual assault, along with other violent crimes, when committed by AI/AN peoples in Indian Country⁴⁵, as well as jurisdiction over all crimes committed by non-AI/AN people in Indian Country⁴⁶. Amending both laws to allow federal jurisdiction of violent crimes to extend past the boundaries of Indian Country, as it relates to crimes committed against AI/AN peoples, would give FBI the power of direct involvement in MMIWG cases across all urban areas, allowing for the following:

- Give ICCU the duty to log all cases of MMIWG in DOJ databases without having to rely on local law enforcement reports. Centralizing the responsible reporting agency allows for less gaps in data.
- Allow ICCU to report such information back to tribal communities, giving tribal nations the ability to advocate for their tribal sisters living off reservation when they go missing or are murdered; UIHI’s report suggest that sovereign nations are afforded the courtesy of being notified when a citizen is killed while traveling outside of the nation so that the sovereign nation of the deceased can advocate for their citizen’s case and family. Tribal nations are considered sovereign nations and should be afforded the same courtesy⁴⁷.

Article 1, Section 8 of the United States Constitution states, “The Congress shall have power... to regulate commerce with foreign nations, and among the several states,

⁴⁵ “General Crimes Act, 18 U.S.C. § 1152,” *US Department of Justice*, accessed March 19, 2019, <https://www.justice.gov/jm/criminal-resource-manual-678-general-crimes-act-18-usc-1152>

⁴⁶ “Major Crimes Act, 18 U.S.C. § 1153,” *US Department of Justice*, accessed March 19, 2019, <https://www.justice.gov/jm/criminal-resource-manual-679-major-crimes-act-18-usc-1153>

⁴⁷ Lucchesi & Echo-Hawk, “MMIWG Report.”

and with the Indian tribes...⁴⁸” This clause gives way to the plenary power Congress, not the executive or judiciary, has over all matters regarding Indian Country. Because of this, only Congress can amend 18 USC 1152 and 18 USC 1153. Once Congress enacts amendments to the 18 USC 1152 and 1153, expanding federal jurisdiction of violent crimes involving MMIWG to urban AI/AN peoples, DOJ can direct ICCU to begin its duty to oversee all collection of data regarding MMIWG in urban areas.

Policy Implementation Tool

Congress is the first step in implementing the proposed policy. The Senate Committee on Indian Affairs would first need create and pass a bill through Congress amending 18 USC 1152 and 1153⁴⁹. Once enacted into law, DOJ can direct ICCU, which already has a presence in Indian Country, to expand its jurisdiction and work with local law enforcement agencies to assume responsibilities of cases involving MMIWG. After the laws are amended, implementation begins.

The policy implementation tool is a media campaign called “Not One More.” The campaign would inform tribal communities and local law enforcement agencies of jurisdictional changes, provide extensive training on how the amended laws effect each party, and provide trainings and outreach to AI/AN peoples in urban areas on how and where to report cases of MMIWG. This would start first by expanding trainings that currently exist under TLOA for all current ICCU agents and specialists, tribal police, and

⁴⁸ U.S. Constitution, art. I, sec. 8.

⁴⁹ To make the proposed policy even more effective, Savanna’s Act would also need to be enacted into law. Savanna’s Act would require the DOJ to add fields to NamUs making it easier to identify MMIWG, as well as create, standardize, and implement protocols for law enforcement agencies and tribal police regarding investigations and finding justice for MMIWG. The proposed policy would be the first step in centralizing the law enforcement effort but would be more effective with the help of the DOJ, as required by Savanna’s Act, with regards to MMIWG, specifically.

newly hired ICCU agents and staff – to account for the increased jurisdiction – on how to better investigate and process cases of MMIWG. It would also extend to local law enforcement agencies in urban areas with high populations of AI/AN peoples living off reservation. The trainings would include how to better identify AI/AN women and how to report MMIWG cases to ICCU. Increasing awareness of the crisis and the lack of data surrounding it brings to light how extreme the crisis has become.

Once trained, ICCU agents, with the cooperation of tribal police, local law enforcement, and UIOs in affected cities would execute the media campaign. The media campaign, “Not One More,” would come in the form of ads, trainings, posters, billboards, and pamphlets. The “Not One More” campaign would include where and how to report cases of MMIWG. It would also include information about NamUs and other databases and how to use them, ultimately reducing the number of MMIWG in urban areas. The cooperation of ICCU, tribal police, local law enforcement agencies, and UIOs would allow for an improved and strengthened trust between law enforcement and AI/AN peoples; a trust that would lead to a data collection system to create a comprehensive database of MMIWG in urban areas.

The “Not One More” campaign is based off a similar campaign implemented by the New York Police Department (“NYPD”) called “The Call is Yours.” “The Call is Yours” is a campaign created by NYPD in the wake of a March 2018 Department of Investigation (“DOI”) report that accused NYPD’s Special Victims Division (“SVD”) of neglecting sexual assault investigations⁵⁰. The campaign consequently launched in April

⁵⁰ Mark Peters, Commissioner, “DOI Investigation finds NYPD has routinely understaffed and neglected the Special Victims Division, negatively impacting sexual assault investigations,” *The City of New York Department of Investigation*, March 27, 2018, https://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport_32718.pdf

2018 and aimed at encouraging survivors of sexual assault to report cases to NYPD; bringing perpetrators to justice, preventing future assaults, and making resources for survivors more readily available. In the first week of the campaign, its video ad had been viewed over 400,000 times on social media, not accounting for the number of people who viewed the ads on subways, in taxis, etc.⁵¹. The campaign saw the increase of reported sexual assault nearly double since its implementation, showing its success, and if implemented similarly, “Not One More” could have just as much success.

While the breakout of the cost of “The Call is Yours” is not publicly available, NYPD’s operating budget for Community Affairs, where special campaigns are funded, increased by \$1.6M from FY17 to FY18⁵². NYPD also hired 22 additional staff to process the influx of sexual assault cases, which accounted for an additional \$1.4M. Taking this model into account, to implement the “Not One More” media campaign across the 71 cities identified in UIHI’s report, as well as hiring additional ICCU agents and staff to account for the increase in jurisdiction, it would cost roughly \$16.5M. Currently, the DOJ’s estimated budget for Indian Country is \$486M, \$81M of which is directed to the Office of Justice Programs (“OJP”), where funding for ICCU agents and specialists is allocated from⁵³.

The timeline for implementation would require multiple steps. To create and pass amended 18 USC 1152 and 1153 through Congress would require an average of 160 days,

⁵¹ “NYPD Response to Office of the Inspector General (OIG) Report on Special Victims Division, “*New York City Police Department*, June 2018, https://www1.nyc.gov/assets/doi/oignypd/response/OIGReport_on_SVD_Response_62618.pdf

⁵² Steve Riester and Eisha Wright, “Report of Finance Division on the Fiscal 2019 Preliminary Budget and the Fiscal 2018 Preliminary Mayor’s Management Report for the New York Police Department,” *The Council of the City of New York, Finance Division*, March 12, 2018, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/03/FY19-New-York-Police-Department.pdf>

⁵³ “FY 2019 Budget Request At a Glance,” *Department of Justice, Discretionary Budget Authority*, accessed March 19, 2019, <https://www.justice.gov/jmd/page/file/1033086/download>

based on an estimate from the 113th Congress (2013-2014)⁵⁴. With the Senate Committee on Indian Affairs' commitment to decreasing the number of MMIWG and addressing the data crisis, as well as the upcoming 116th Democratic majority Congress, amending 18 USC 1152 and 1153 in late FY 2019, early FY20 seems feasible. Presuming the passage of the amendments to 18 USC 1152 and 1153, the appropriations for the implementations would be introduced to Congress for FY21's budget in February 2020 and be approved for the start of FY21, in October 2020⁵⁵. Once appropriations are distributed, based on "The Call is Yours," implementation of "Not One more" could take as little as 2 months to begin. Active outreach of the campaign would last for 6 months, with posters and pamphlets being left at community centers, like UIHI, for AI/AN women to have access to indefinitely.

Policy Analysis

Historically, Congress has used its plenary power to amend and enact laws in matters regarding Indian Country. Amending 18 USC 1152 and 1153 would be no different. In the context of amending and enacting laws protecting AI/AN women, Congress has seen some successes. TLOA was introduced into Congress in January 2009; it passed the Senate with Unanimous Consent in June 2010, passed the House 362-92 in July 2010, and was signed into law by President Obama in July 2010⁵⁶. Feasibly, a similar model and implementation of the proposed policy is attainable.

⁵⁴ Ornstein, Mann, Malbin, Rugg and Wakeman, "Chapter 6: Legislative Productivity in Congress and Workload," *Brooking, Vital Statistics on Congress*, April 18, 2014, https://www.brookings.edu/wp-content/uploads/2016/06/Vital-Statistics-Chapter-6-Legislative-Productivity-in-Congress-and-Workload_UPDATE.pdf

⁵⁵ Karen Yourish and Laura Stanton, "A guide to the federal budget process," *The Washington Post*, accessed March 19, 2019, <https://www.washingtonpost.com/wp-srv/special/politics/federal-budget-process/budgetprocess.pdf?noredirect=on>

⁵⁶ US Congress, "HR 725."

Amending 18 USC 1152 and 1153 would not cost the federal government additional funds outside of the previously allocated budget for DOJ programs in Indian Country. 18 USC 1152 and 1153 would utilize provisions already implemented through TLOA. Through TLOA, ICCU is mandated to provide trainings and assistance to FBI, BIA and tribal police officers on how to properly investigate and report crimes, specifically involving MMIWG, in Indian Country. By amending 18 USC 1152 and 1153, any additional ICCU agents and staff hired to work with MMIWG cases in urban areas would be able to benefit from these mandated trainings at no additional cost to the federal government.

The FY18 federal budget increases funding for several Indian Country programs through DOJ. These increases in funding would pay for the shortfall created by hiring new ICCU agents and staff to focus solely on MMIWG in urban areas, outside of tribal lands. The FY18 budget includes⁵⁷:

- \$150M from the Crime Victims Fund for the first time. The Crime Victims Fund provides services to crime victims, which could be utilized in the “Not One More” media campaign.
- \$90.4M for tribal criminal justice assistance from OJP, a significant increase in funding from the previous fiscal year. OJP’s Bureau of Justice Assistance (“BJA”) is responsible for advancing the direction of justice. Funds from the BJA grant can be used directly to “enhance law enforcement.”⁵⁸

⁵⁷ “NCAI Analysis of the President’s FY2018 Budget Request, Administration Releases FY 2018 Budget,” *National Congress of American Indian, Budget & Appropriations*, May 24, 2017, http://www.ncai.org/attachments/PolicyPaper_bUfKwkOGVsvShjERfJPqoKPuoLhcVXZxGZdRPJxEncQdtDXxuGn_2017.05.23%20FY%202018%20NCAI%20Pres%20Budget%20Analysis%20final.pdf

⁵⁸ “Justice Department Announces Funding Opportunities to Support Public Safety in Indian Country,” *Department of Justice, Office of Public Affairs*, November 28, 2018,

- \$30M for the tribal program Community Oriented Policing Services (“COPS”). COPS assists state, local, and tribal law enforcement agencies in their efforts to prevent crime, enforce laws, and represent the rights and interests of AI/AN peoples. Repurposing these funds to account for the expanding role of ICCU could offset the cost of newly hired agents and staff.

Aside from the benefit of no added cost to the federal government, amending 18 USC 1152 and 1153 to increase federal jurisdiction to include MMIWG in urban areas could increase the number of solved cases. In November 2016, the Canadian Government took an active interest in MMIWG, investing over \$53.8M into a 2-year inquiry on the subject. As a part of the inquiry, the Royal Canadian Mounted Police (“RCMP”), Canada’s national law enforcement agency, took on the initiative and is actively investigating unresolved cases of MMIWG. RCMP also increased efforts to raise awareness about the crisis of MMIWG nationally. As a part of the initiative, RCMP added a new National Investigative Standards and Practices Unit, which provides oversight to RCMP investigations; a large portion of which will focus specifically on MMIWG investigations. The inquiry, which was to be concluded in November 2018, was extended to April 30, 2019 due to the overwhelming response from survivors and family members of MMIWG who wanted to share their experiences with the Canadian government⁵⁹. Using this as a basis, expanding the jurisdiction of ICCU to include MMIWG in urban areas could have the same effect as is currently seen in Canada. By expanding the jurisdiction of ICCU to

<https://www.justice.gov/opa/pr/justice-department-announces-funding-opportunities-support-public-safety-indian-country>

⁵⁹ “National Inquiry into Missing and Murdered Indigenous Women and Girls,” *Government of Canada, Indigenous and Northern Affairs*, June 6, 2018, <https://www.canada.ca/en/indigenous-northern-affairs/news/2018/06/government-of-canada--national-inquiry-into-missing-and-murdered-indigenous-women-and-girls.html>

MMIWG cases in urban areas and clearly delineating where to report cases of MMIWG, as is done in Canada, more survivors and family members of MMIWG could come forward, allowing for FBI to not only have the opportunity to solve more previously undisclosed cases, but also have the data to build a more comprehensive database of MMIWG in urban areas.

With its expanded role, RCMP has utilized third parties to help raise awareness and increase reporting strategies on MMIWG. They have employed the help of several NGOs whose missions are aimed specifically at protecting Indigenous Canadian women. The RCMP has partnered with MMIWG organizations in effected areas to coordinate on⁶⁰:

- Policy and program reviews and evaluations to ensure RCMP's strategies are effective
- Attending or organizing memorials, vigils, or other events to show solidarity and empathy with MMIWG and their families
- Creating a series of posters to encourage reporting incidents to proper authorities, reporting missing persons cases without delay, and to properly report with as much detail as possible

Using the successes of RCMP in partnership with local MMIWG organizations, amending 18 USC 1152 and 1153 could see similar outcomes. According to research done by the Urban Indian Health Commission, AI/AN peoples in urban areas are more likely to “seek health care from urban Indian organizations than from non-Indian clinics⁶¹.” Using

⁶⁰ “Working Together to End Violence Against Indigenous Women and Girls; National Scan of RCMP Initiatives,” *Royal Canadian Mounted Police*, May 2017, <http://www.rcmp-grc.gc.ca/wam/media/1830/original/c9e8444da1a3ddb48aefae3f48a7306.pdf>

⁶¹ “Invisible Tribes: Urban Indians and Their Health in a Changing World,” *Urban Indian Health Commission*, accessed April 4, 2019, <https://www2.census.gov/cac/nac/meetings/2015-10-13/invisible-tribes.pdf>

the logic that AI/AN peoples are more likely to seek help from organizations aimed specifically at helping them, amending 18 USC 1152 and 1153 could see an increase in reports of MMIWG cases in urban areas as partnerships between the newly expanded ICCU and UIOs develop. The expanded role of ICCU in conjunction with UIOs that are targeted at MMIWG would allow urban AI/AN peoples to feel more comfortable coming forward. The partnership between ICCU and UIOs would allow ICCU to train such organizations on reporting strategies, who would in turn pass that information on to urban AI/AN women; allowing the “Not One More” campaign to be a success.

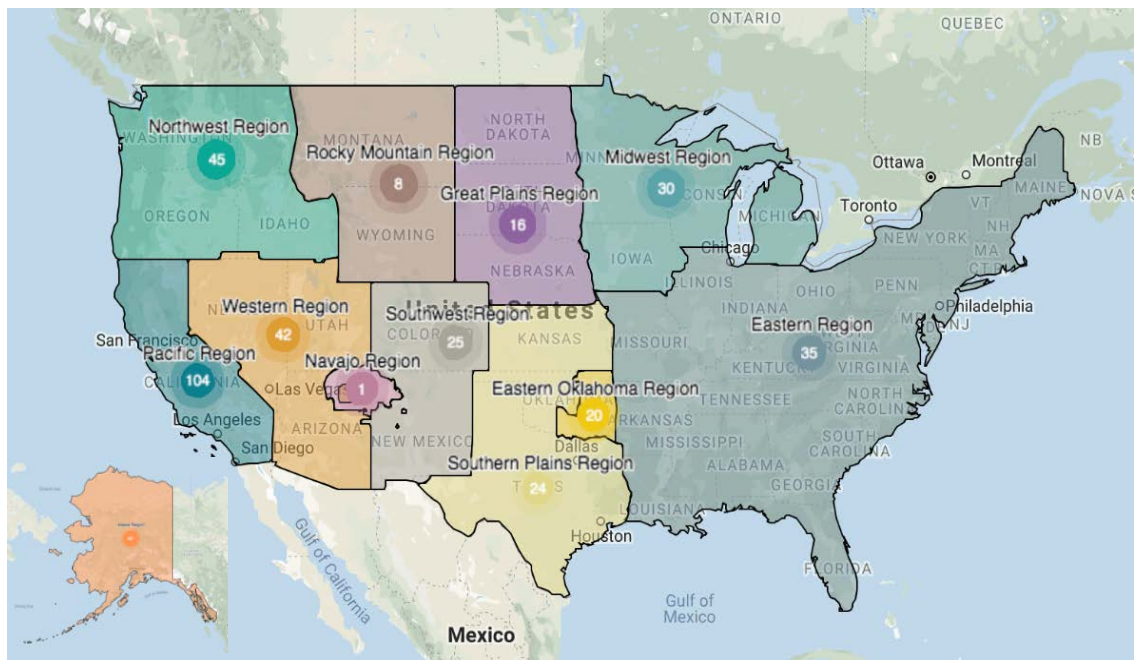


Figure 3 Tribal Leaders Directory Map

Potential pros aside, there are also cons associated with this policy. Currently, FBI’s jurisdiction in Indian Country expands to 567 federally recognized tribes on 334 reservations. ICCU has offices on over 200 reservations, serving over 1M AI/AN peoples⁶². Tribal regions are predominantly located in the Pacific Northwest, California,

⁶² “Tribal Leaders Directory Map,” *US Department of the Interior Indian Affairs*, accessed April 2, 2019, https://www.bia.gov/sites/bia.gov/libraries/maps/tld_map.html

and Alaska, indicating, presumably, that urban areas in these regions receive the highest rates of urban AI/AN peoples (See Figure 3). FBI's jurisdiction would nearly triple. According to the last census, nearly 3M people self-identified as solely AI/AN, not including those who self-identified as mixed-race. An estimated 71%, or over 2M AI/AN peoples live in urban areas⁶³. Although there is currently no way to track how many of the self-identified AI/AN peoples living in urban areas belong to federally recognized tribes – the only AI/AN peoples included in the expanded federal jurisdiction of ICCU – the increase in case load would be extreme. Additionally, even with more boots on the ground, FBI can only track cases reported to them; underreporting is a current hurdle in cases of MMIWG to both local law enforcement and UIOs.

Underreporting can be attributed to two main factors; the failure of “Not One More” to bring public awareness to the new jurisdictional boundaries and reporting strategies of ICCU, and distrust in the federal government; the latter is discussed in greater detail in the political analysis section. Failure to bring awareness can be caused by a lack of cooperation with MMIWG organizations in urban areas. Under VAWA, the Office of Violence Against Women (“OVW”) allocated \$48.1M in FY18 to Indian Country programs, a significant decrease from FY17. This number is expected to decrease again in FY19 as VAWA reauthorization continues to fail passage through Congress. Within the decrease in OVW funding are⁶⁴:

- \$35.5M for the Tribal Governments Program. This program aims to enhance tribal ability to respond to violent crimes against women.

⁶³ Tina Norris, Paula Vines and Elizabeth Hoeffel, “The American Indian and Alaska Native Population: 2010,” *United States Census Bureau, 2010 Census Briefs*, accessed April 4, 2019, <https://www.census.gov/history/pdf/c2010br-10.pdf>

⁶⁴ NCAI, “NCAI Analysis.”

- \$6.2M for the Tribal Coalitions Program. This program helps develop and operate NGOs that specifically address violence against women.
- \$3.4M for the Tribal Sexual Assault Services Program. This program funds services aimed at helping victims and their families.
- \$2.5M for implementation of special domestic violence criminal jurisdiction. This program was cut in half.
- \$1M for research on violence against AI/AN women.
- \$500K for National Indian Country Clearinghouse on sexual assault.

Cuts to all these programs inhibit the ability of organizations aimed at helping MMIWG in Indian Country. With such cuts in funding in Indian Country, an area where the crisis of MMIWG also exists, expanding these programs to urban areas will be a challenge. With the downward trend of funds being allocated to programs aimed at violence against women, attaining extra funding from the federal government to expand these programs in urban areas and help fund UIOs aimed at addressing the crisis of MMIWG is unlikely. The lack of funding could in turn mean that UIOs might be less incentivized to cooperate with the expanded role of ICCU. Without cooperation, based on research previously referenced from the Urban Indian Health Commission, that AI/AN peoples in urban areas are more likely to seek help from UIOs, AI/AN peoples will be less inclined to report cases of MMIWG. Not only will AI/AN peoples in urban areas be less inclined to report, but those who want to report would likely have trouble identifying what agency to report to, since public awareness of amended 18 USC 1152 and 1153 depends on “Not One More” being facilitated in conjunction with UIOs.

Political Analysis

Passing amendments to 18 USC 1152 and 1153 through Congress and into law is politically feasible. With the 115th Senate's bipartisan commitment to legislation regarding MMIWG, as their past voting record would indicate, the 116th Senate is likely to vote similarly on legislation aimed specifically at addressing the crisis of MMIWG. Amending 18 USC 1152 and 1153 would build upon Savanna's Act and TLOA's mission to address MMIWG, while also expanding the mission to include urban AI/AN women, an objective of the Senate Committee on Indian Affairs. Additionally, based on their voting record for TLOA, and the political makeup of the incoming 116th House of Representatives, getting a two thirds majority in the House leans heavily toward passing the amendments, leaving it up to the President to sign the amendments into law. Using his FY18 budget, which expanded DOJ funding for programs in Indian Country, as precedent, President Trump is likely to sign amended 18 USC 1152 and 1153 into law. Amending 18 USC 1152 and 1153, however, also requires buy in from several key stakeholders and the general public.

Key Stakeholders

The opinions of several stakeholders should be consulted when considering adopting the proposed policy. Congress and AI/AN peoples represent the two biggest key stakeholders, with DOJ and UIOs also important.

Congress

Congress tends to be relatively bipartisan when it comes to laws regarding Indian Country. Several laws over the past three administrations, with vastly different congressional

political makeups, have been introduced and passed into law to keep treaties old promises to protect AI/AN peoples. This can be attributed to the fact that Congress is more familiar with and understanding of the legal obligations the federal government has to federally recognized tribes⁶⁵. While Republican Congressional members tend to agree that the role of the federal government should be diminished, and tribes should receive resources directly to reduce dependence on the government and spark innovation⁶⁶, Senate Republicans have historically voted to pass laws protecting AI/AN women. House Republicans have also garnered enough votes in each congressional session to pass a two thirds majority on laws protecting AI/AN women⁶⁷. Republican Congressmen from districts with high populations of federally recognized tribes are more likely to vote in favor of policies that help AI/AN peoples than members from districts with little to no tribes because of their understanding of and contact with issues AI/AN peoples face⁶⁸. Democratic Senators and Congressmen have continuously introduced and voted in support of policies that aid AI/AN women. Democrats in Congress tend believe that issues AI/AN peoples face are due to shortages in funding, and therefore strongly agree that continuing to fund tribal programs is a necessity⁶⁹. Political affiliation aside, Congress tends to defer to a few “expert” members on issues regarding AI/AN peoples, unless implications of policies are more partisan in matter⁷⁰.

Alternatively, in the wake of the #MeToo movement, policies regarding women’s rights and violence against women have become more partisan in matter. The 2018

⁶⁵ “Research Findings: Compilation of All Research,” *Reclaiming Native Truth*, accessed April 16, 2019, <https://www.firstnations.org/wp-content/uploads/2018/12/FullFindingsReport-screen.pdf>

⁶⁶ Reclaiming Native Truth, “Research.”

⁶⁷ Based on Roll Call research of several laws regarding violence in Indian Country

⁶⁸ Reclaiming Native Truth, “Research.”

⁶⁹ Reclaiming Native Truth, “Research.”

⁷⁰ Reclaiming Native Truth, “Research.”

Reauthorization of VAWA met political gridlock and has since expired, putting funding for the implementation of amending 18 USC 1152 and 1153 at risk⁷¹. The politicization of women and growing division along party lines could cause members of Congress who have historically voted in favor of policies addressing MMIWG to reconsider their vote. Bipartisan support of this policy, just as bipartisan support of Savanna's Act and TLOA proved helpful in passing them through the Senate, is key to its passage.

American Indian and Alaska Native Peoples

The history of the federal government's relationship with AI/AN peoples is storied. The persistent violence against AI/AN peoples has aided in their general mistrust of the federal government⁷². Additionally, federal law in Indian Country is seen by many AI/AN peoples as “diminish[ing] tribal sovereignty, perpetuat[ing] the ongoing encroachment of tribal jurisdiction, regulat[ing] boundaries of Native identity, and limit[ing] [the] ability to envision and enact practices of decolonization⁷³.” To many AI/AN peoples, federal law limits the ability of tribal nations to “exercise tribal jurisdiction over their respective communities and has created a convoluted structure of federal, state, and tribal jurisdiction that is practically impossible to navigate⁷⁴.” The federal government is also seen to have caused “tribal governments [to] los[e] jurisdiction over the vast majority of sexual violence

⁷¹ Based on the policy proposal and policy analysis, funding for extra ICCU agents and staff members, as well as programming associated with policy implementation relies on appropriations in the current budget.

⁷² Urban Indian Health Commission, “Invisible Tribes.”

⁷³ Kimberly Robertson, “The ‘law and order’ of violence against Native women: A Native feminist analysis of the Tribal Law and Order Act,” *Decolonization: Indigeneity, Education & Society* 5, no. 1 (2016): 1-23, accessed April 15, 2019. <https://jps.library.utoronto.ca/index.php/des/article/download/22551/19734/>

⁷⁴ Robertson, “Native Feminist Analysis.”

that happens to Native American women⁷⁵.” Along with the impediment of tribal sovereignty that federal law brings is the institutional racism that AI/AN peoples face. Exclusion from racial categories on federal missing persons reports and databases, as well as the ability for the crisis of MMIWG to be invisible for so long, adds to the distrust AI/AN peoples, specifically women, have in federal government⁷⁶.

Addressing AI/AN peoples’ mistrust in the federal government is crucial to successfully amending and implementing 18 USC 1152 and 1153. Two of the biggest arguments research presently conveys is, one, the failure of the federal government to adequately coordinate with tribal and local police on where jurisdiction lays and, two, that current and proposed laws do not account for MMIWG in urban areas. This policy proposal could address both arguments.

- *Jurisdiction* – The implementation of amended 18 USC 1152 and 1153 would alleviate the confusion of the jurisdictional boundaries between federal, state, local, and tribal law enforcement agencies. The “Not One More” media campaign, establishing ICCU as the reporting agency for MMIWG in urban areas, would allow for a clear boundary to be drawn.
- *Inclusivity* – UIHI’s report recommends policies that include MMIWG in urban areas, specifically citing that current implemented and proposed policies (i.e. TLOA and Savanna’s Act) are not expansive enough because “cases occurring

⁷⁵ Sarah Deer, “Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law,” *Suffolk University Law Review* XXXVIII, no. 455 (2005), accessed April 15, 2019, <http://www.red-wind.net/resources/Sexual-Assault/Sovereignty-of-the-Soul---Deer.pdf>

⁷⁶ Lucchesi and Echo-Hawk, “MMIWG report.”

in urban areas are not federal jurisdiction⁷⁷.” Expanding federal jurisdiction can ensure laws like TLOA and Savanna’s Act include MMIWG in urban area.

Department of Justice

DOJ has already taken steps to implement TLOA mandates that address MMIWG. In late 2018, DOJ added a field to the NamUs aimed at increasing data and case information to address the crisis of MMIWG. The new fields include the following questions⁷⁸:

- Was the missing person last seen on tribal land under the jurisdiction of the United States?
- Was the missing person’s primary residence on tribal land under the jurisdiction of the United States?
- Was the missing person enrolled or affiliated with a state- or federally-recognized tribe? If yes, the names of specific tribes will be made available through a pre-populated pick-list.

Additionally, DOJ has taken action by doubling its funding of programs aimed at addressing violence against AI/AN women amid the growing crisis⁷⁹. These are in addition to the already existent reforms DOJ has implemented since TLOA, to train local and tribal law enforcement on handling investigations of MMIWG cases and to report data on violence against AI/AN women to Congress. With DOJ’s history of not only addressing but

⁷⁷ Lucchesi and Echo-Hawk, “MMIWG report.”

⁷⁸ “News from NIJ Policing & Law Enforcement,” *National Institute of Justice*, accessed April 12, 2019, <https://www.justice.gov/file/1130556/download>

⁷⁹ “Justice Department Will Award Up to \$246 Million in Grants to improve Public Safety in American Indian and Alaska Native Communities,” *Department of Justice, Office of Public Affairs*, September 19, 2018, <https://www.justice.gov/opa/pr/justice-department-will-award-246-million-grants-improve-public-safety-american-indian-and>

instituting reforms, as well as their priority to enhance federal law enforcement and criminal justice responses to MMIWG⁸⁰, amending 18 USC 1152 and 1153 with their support is likely.

Urban Indian Organizations

UIOs are a key aspect in the successful implementation of amended 18 USC 1152 and 1153. Amending 18 USC 1152 and 1153 would be virtually useless without the help of UIOs to ensure urban AI/AN women are aware of where and how to report cases of MMIWG. UIOs, specifically health organizations, have been integral in the wellbeing of AI/AN peoples in urban areas. As stated in the policy analysis section, AI/AN peoples in urban areas are more likely to seek help from UIOs. UIOs, like UIHI, were created to unify and utilize data to help AI/AN peoples in urban areas⁸¹. UIOs provide AI/AN peoples in urban areas with quality help from people who understand and specifically address the needs of the urban AI/AN communities. Their sensitivities to AI/AN cultures and practices encourage urban AI/AN women to seek resources from them⁸². As is evident in RCMPs coordination with UIOs in Canada, UIOs serve as the liaison between urban AI/AN women and the federal government. UIOs, such as UIHI, seem open to working in partnership with the federal government to create a comprehensive database of MMIWG, with the common goal of ending the crisis. Currently, UIHI holds the largest database on MMIWG⁸³. With the expanded jurisdiction to ensure all MMIWG cases are being reported to ICCU, together

⁸⁰ Katharine Sullivan, "Recognizing the National Day of Awareness for Missing and Murdered Native Women and Girls," *Department of Justice, Office of Violence Against Women*, May 4, 2018, <https://www.justice.gov/ovw/blog/recognizing-national-day-awareness-missing-and-murdered-native-women-and-girls>

⁸¹ Urban Indian Health Commission, "Invisible Tribes."

⁸² Urban Indian Health Commission, "Invisible Tribes."

⁸³ Lucchesi & Echo-Hawk, "MMIWG Report."

UIHI and the federal government could expand upon the current UIHI database, creating a comprehensive database accessible by law enforcement agencies and tribal citizens alike.

Public Opinion

Public opinion on the crisis of MMIWG rarely exists in data. For the most part, this is because many Americans are unaware that the crisis exists. As previously noted, cases of MMIWG are rarely reported in the media. 95% of the cases in UIHI's report, or 480 out of 506, were not covered by national or international media⁸⁴, allowing the crisis to continue in the shadows of the American public. Because of the lack of knowledge surrounding the data crisis of MMIWG in urban areas, polls regarding violence against women laws and federal intervention in Indian Country were evaluated to assess public opinion.

68% of respondents to a Harvard CAPS-Harris Poll believe that the federal government should be doing and saying more about violence against women⁸⁵. An additional 60% believe that Congress should pass new laws addressing violence against women⁸⁶. When it comes to AI/AN peoples specifically, 63% of respondents to a Greenberg Quinlan Rosner Poll believe that the federal government should be doing more for AI/AN peoples⁸⁷. 74% of respondents agree that increasing funding for AI/AN peoples is how the federal government can do more (See Figure 4)⁸⁸.

⁸⁴ Lucchesi & Echo-Hawk, "MMIWG Report."

⁸⁵ Jonathan Easley, "Voters want Trump to do more to address violence against women," *The Hill*, February 26, 2018, <https://thehill.com/homenews/administration/375628-poll-voters-say-trump-not-doing-enough-to-address-violence-against>

⁸⁶ Easley, "Voters want Trump."

⁸⁷ Reclaiming Native Truth, "Research."

⁸⁸ Reclaiming Native Truth, "Research."

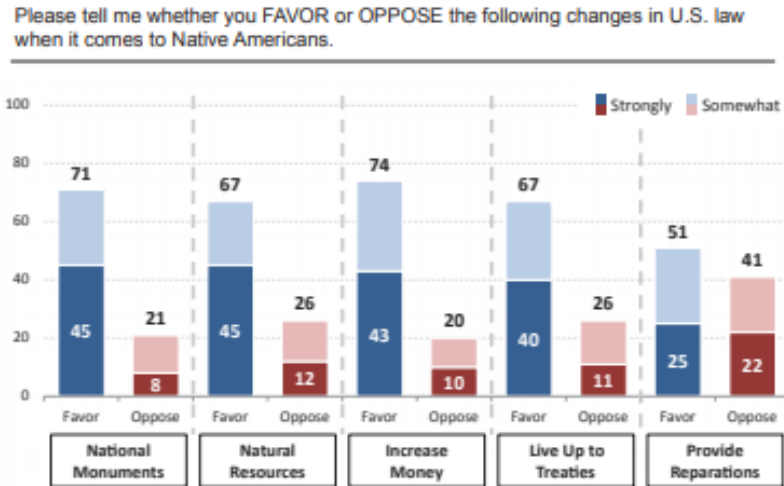


Figure 4 Reclaiming Native Truth Funding Data

Polling from the Greenberg Quinlan Rosner poll was broken down into geographic and ethnic population segments to examine public opinion on AI/AN peoples and the federal government. 52% of African American respondents believe AI/AN peoples were unfairly given more federal assistance than other groups. Rural voters in proximity to Indian Country also believe AI/AN peoples are unfairly receiving entitlements. Alternatively, mostly conservative, adult, Hispanic men were some of the most supportive to AI/AN issues, presumably because of blood ties⁸⁹. White liberals overwhelmingly supported policies to remedy inequalities AI/AN peoples face. They also, however, were more indecisive than other races and ethnicities on the role of the federal government in AI/AN issues. They tended to believe they needed more information before deciding on the role of the government in Indian Country; grappling with what AI/AN peoples want and what is in the perceived best interest of AI/AN peoples⁹⁰. The poll also revealed that several opponents of federal intervention showed potential to become allies when presented

⁸⁹ Reclaiming Native Truth, “Research.”

⁹⁰ Reclaiming Native Truth, “Research.”

with more information on AI/AN issues. Figure 5⁹¹ depicts where populations are in terms of supporting changes in federal law to benefit AI/AN peoples.

Allies	Movable	Tougher
People of color, particularly Hispanics	Younger non-college-educated Whites	Whites in Indian Country
Democrats	Asians	Seniors
Liberals	Young men	Conservatives
Residents of Northeast	Residents of Rocky Mountain states	Older non-college-educated men
People who know a Native American	Residents of Deep South	Republicans
People of Native American Ancestry	Liberal/moderate Republicans	
Young, college-educated people	Young African Americans	
Young women	Fathers	

Figure 5 Reclaiming Native Truth Population Segments

Using polling data on violence against women, as well as on federal intervention in issues regarding AI/AN peoples, it can be presumed that should the general public be more informed on the crisis of MMIWG, specifically in urban areas, public opinion would support the proposed policy. To account for the population segments in the “Tougher” category of Figure 5, transparency of the additional cost of the proposed policy, or lack thereof, to the federal government would be crucial.

Political Impact

As a champion of issues pertaining to AI/AN women, you have been instrumental in supporting and passing laws aimed at MMIWG. Your support of amending 18 USC 1152 and 1153 to expand the jurisdiction of FBI to include urban AI/AN women would be

⁹¹ Reclaiming Native Truth, “Research.”

consistent with your commitment to end the crisis of MMIWG. It would also, however, expand the role of the federal government, inconsistent with your colleagues' conservative views. Figure 6 shows a SWOT analysis of the potential impacts amending 18 USC 1152 and 1153 would have.

Strengths	Weaknesses
Expands current laws aimed at MMIWG to include AI/AN women living off reservations	Expands the role of the federal government, an anti-conservative ideal
Previous bipartisan support for MMIWG policies indicates it passing the Senate	Reallocates budgeted funds from other IC programs that are also in need
No additional cost to federal government because funding already exists	Requires Savanna's Act to pass to reach full potential
In conjunction with TLOA and Savanna's Act, creates a more comprehensive, inclusive policy	Requires reauthorization and continued funding of VAWA
Opportunities	Threats
Decrease the number of MMIWG	Requires coordination and reliance on UIOs and local police
Increase the success of a comprehensive federal database to include AI/AN women in urban areas	Does not change the issue of misclassification of murdered AI/AN women
Give MMIWG a voice and build trust among AI/AN women and the federal government	Impedes tribal sovereignty by deciding on behalf of AI/AN people

Figure 6 SWOT Analysis

Recommendation

I recommend moving forward with the proposal to amend 18 USC 1152 and 1153 to expand federal jurisdiction of major crimes and crimes perpetrated by non-AI/AN people against AI/AN peoples in Indian Country to all AI/AN peoples. In doing so, all current and future federal legislation regarding MMIWG will be comprehensive, including AI/AN peoples living off reservation in urban areas. While there are potential cons to the proposal, identified and analyzed in the analyses sections, the potential pros outweigh them.

As a longtime member of the Senate Committee on Indian Affairs, your commitment to issues AI/AN peoples face is evident. This proposal would fall in line with your priority to end the crisis of MMIWG and would have an added benefit that was previously unaddressed; it would include urban AI/AN women. Your vow to former Senator Heitkamp, to reintroduce Savanna's Act – a bill you co-sponsored – in order to decrease the crisis of MMIWG by improving the federal government's response to it, can only be strengthened by amendments to 18 USC 1152 and 1153. A clear delineation of responsible law enforcement agencies for cases of MMIWG in urban areas is crucial to creating a comprehensive database and ultimately decreasing the crisis.

The biggest potential hurdles in the proposed policy are its reliance on funding from other legislation and support from AI/AN peoples and UIOs. While such funding exists and is appropriated for the coming fiscal year, a decrease in funding would impact the cost, or lack thereof, of amending 18 USC 1152 and 1153. Additionally, this policy would require buy-in from AI/AN peoples and UIOs. Historically, AI/AN peoples have been wary of laws expanding the reach of the federal government in Indian Country because of their impediment on tribal sovereignty. Both of these cons, however, can be contained in regard to the growing crisis of MMIWG.

Bipartisan commitment to ending the crisis of MMIWG can address the concern of funding. The Senate Committee on Indian Affairs is a great example of how bipartisan commitment to AI/AN causes can put politics aside and pass legislation for the good of the people the committee aims to protect. Your bipartisan effort to cosponsor, and subsequently reintroduce, Savanna's Act proves Congress' commitment to MMIWG is real, meaning future funding for this cause can be presumed safe.

Buy-in from AI/AN peoples can also be contained when it comes to MMIWG. In hearings held during the 115th Congress, the Senate Committee on Indian Affairs heard from several prominent tribal officials and AI/AN peoples on the need for federal legislation to address the crisis. By including AI/AN peoples in the decision-making process, along with trainings on the goals and role of the expanded jurisdiction of ICCU, in conjunction with assistance from UIOs and tribal citizens, buy-in from AI/AN peoples can be achieved. As recommended by UIHI's report, legislation that includes urban AI/AN women is needed and amending 18 USC 1152 and 1153 does just that.

The potential pro to create a data collection system that can mainstream a comprehensive database of MMIWG offsets the cons identified in the analyses. Amending 18 USC 1152 and 1153 will allow for FBI to increase its jurisdiction of major crimes, including murder, and crimes perpetrated by non-AI/AN people against AI/AN peoples from Indian Country to all AI/AN peoples. In doing so, urban AI/AN women will be included in laws aimed at addressing the crisis of MMIWG. The amended laws, in conjunction with the "Not One More" campaign, will allow urban AI/AN women to report MMIWG to the proper authorities. By amending 18 USC 1152 and 1153, three potential goals can be achieved:

- Clearly and legally designating one responsible agency to investigate and report on cases of MMIWG
- Creating a comprehensive database with information from the single responsible agency
- Using the database to study why and how the crisis of MMIWG in urban areas is growing

These three goals can all lead to a reduction in cases of MMIWG in urban areas, ultimately bringing justice for the previously invisible, missing and murdered Indigenous women and girls in urban areas.

Curriculum Vitae

Justina Rothenberg was born on July 19, 1990 in Livingston, New Jersey. She graduated from Rutgers University with a Bachelor of Arts in History and Political Science, focusing her studies on women and children of color from the Vietnam-War era to present. Following completion of her undergraduate degree, Justina worked in the private sector as an analyst from 2012-2018, taking 2015 off to serve an AmeriCorps term with first generation and undocumented students in California. She started her graduate degree at the University of Southern California's Sol Price School of Public Policy, completing research on public/private partnerships between the Los Angeles Unified School District and health clinics throughout Los Angeles to provide first generation and undocumented youth with health and wellness programs. In 2018, Justina transferred to Johns Hopkins University to complete her degree, providing research and policy analysis on a range of subjects pertaining to women, including campus sexual assault and missing and murdered indigenous women and girls in urban areas. Justina currently works as an analyst for the City of New York.